

**UNITED STATES – ANTI-DUMPING MEASURES ON POLYETHYLENE RETAIL
CARRIER BAGS FROM THAILAND**

WT/DS383

**FIRST WRITTEN SUBMISSION
OF THE UNITED STATES OF AMERICA**

October 26, 2009

1. The United States notes that the parties to this dispute have reached an Agreement on Procedures to permit expeditious resolution of this dispute.¹ In its request for a panel in this dispute, Thailand claims that the United States has breached its obligations under Article 2.4.2, first sentence, of the *Agreement on Implementation of Article VI of the GATT 1994*. The basis of Thailand's claim is the U.S. Department of Commerce's use of "zeroing" when calculating the dumping margins for certain investigated exporters in the investigation of *Polyethylene Retail Carrier Bags from Thailand*.²

2. Thailand describes, both in its request for a panel, and in its first written submission, the Department of Commerce's use of "zeroing" in the calculation of the dumping margin for these exporters as follows: the Department of Commerce (1) identified different "models," i.e., types, of products are identified using "control numbers" that specify the most relevant product characteristics; (2) calculated weighted average prices in the U.S. and weighted average normal values in the comparison market on a model-specific basis, for the entire period of investigation; (3) compared the weighted average normal value of each model to the weighted average U.S. price for that same model; (4) calculated the dumping margin for an exporter by summing the amount of dumping for each model and then dividing it by the aggregated U.S. price for all models; and (5) set to zero all negative margins on individual models before summing the total amount of dumping for all models.³

3. Thailand further states that its claim is limited to the use of "zeroing" when calculating the margins for "all of the investigated exporters whose margins of dumping were not based on total facts available." Thailand refers to the Order in this dispute which identifies these exporters as follows: Thai Plastic Bags Industries Co. Ltd., Winner's Pack Co. Ltd., APEC Film Ltd, Advance Polybag Inc., Alpine Plastics Inc., API Enterprises Inc., and Universal Polybag Co. Ltd.⁴

4. Thailand states that the zeroing methodology applied in the Department of Commerce's calculation of the dumping margins in the investigation of *Polyethylene Retail Carrier Bags from Thailand*, is the same as the methodology found by the Appellate Body to be inconsistent with Article 2.4.2, first sentence, in *US – Softwood Lumber Dumping*.⁵ Thailand further states that it considers the Department of Commerce's use of the "zeroing" methodology in calculating the dumping margins of certain exporters of plastic bags from Thailand to be inconsistent with Article 2.4.2, first sentence, on the grounds set forth in the *US – Softwood Lumber Dumping* Appellate Body report.⁶

¹ See Exhibit THA-8.

² WT/DS383/2 (March 10, 2009), pp. 2-3.

³ See WT/DS383/2, p. 2; *First Written Submission of Thailand*, 16 October 2009, para. 10 (hereinafter "Thailand First Submission.")

⁴ Thailand First Submission, para. 14.

⁵ Thailand First Submission, para. 15; Appellate Body Report, *United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/AB/R, adopted 31 August 2004 (hereinafter "*US – Softwood Lumber Dumping*").

⁶ Thailand First Submission, para. 16.

5. The United States acknowledges the accuracy of Thailand’s description of the Department of Commerce’s use of “zeroing” in calculating the dumping margins for the individually investigated exporters whose margins of dumping were not based on total facts available. The United States recognizes that in *US – Softwood Lumber Dumping* the Appellate Body found that the use of “zeroing” with respect to the average-to-average comparison methodology in investigations was inconsistent with Article 2.4.2, by interpreting the terms “margins of dumping” and “all comparable export transactions” as used in the first sentence of Article 2.4.2, in an integrated manner.⁷ The United States acknowledges that this reasoning is equally applicable with respect to Thailand’s claim regarding the individually investigated exporters whose margins of dumping were not based on total facts available in the investigation at issue.

⁷ See *US – Softwood Lumber Dumping (AB)*, paras. 62-117.